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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,241	01/14/2002	Matthias Bratz	42044 Cont.	1890
26474 7590 12/30/2009 NOVAK DRUCE DELUCA + QUIGG LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005			EXAMINER QAZI, SABIHA NAIM	
			ART UNIT 1612	PAPER NUMBER
			MAIL DATE 12/30/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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DEC 30 2009

NOVAK DRUCE DELUCA + QUIGG LLP
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WASHINGTON DC 20005

In re Application of: :
Bratz et al. :
Serial No.: 10/043,241 : PETITION DECISION
Filed: January 14, 2002 :
Attorney Docket No.: 42044 Cont. :

This is in response to the petition under 37 CFR § 1.181, filed December 22, 2009, requesting that the finality of the Office action of November 23, 2009 be withdrawn and a new Office action be issued based on the totality of the record.

BACKGROUND

On February 12, 2009, the examiner mailed a final Office action setting a three month statutory limit for reply. The examiner noted that claims 10-17, 19, 20 and 22-31 were pending and claims 10-17, 19, 20 and 22-31 were rejected. Claims 10-17 and 19-31 were rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Claims 10-17 and 19-31 were rejected under 35 USC 112, first paragraph, as being enabling for a specific solid sulfonylurea herbicide but not all. Claims 10-17 and 19-31 were rejected under 35 USC 103 (a) as being unpatentable over Kocur et al, Dupont and Malik et al.

On July 10, 2009, applicants filed arguments traversing the examiner's rejections instituted in the non-final Office action of February 12, 2009. Applicants also submitted a substitute specification.

On November 23, 2009, the examiner mailed a final Office action setting a three month statutory limit for reply. The examiner noted that claims 10-17, 19, 20 and 22-31 were pending and claims 10-17, 19, 20 and 22-31 were rejected. Claims 10-17 and 19-31 were again rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Claims 10-17 and 19-31 were again rejected under 35 USC 112, first paragraph, as being enabling for a specific solid sulfonylurea herbicide but not all. Claims 10-17 and 19-31 were again rejected under 35 USC 103 (a) as being unpatentable over Kocur et al, Dupont and Malik et al.

On December 22, 2009, applicants submitted the petition under consideration herein.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition, applicants "respectfully petition that the finality of the Office action mailed on November 23, 2009, be withdrawn, and that the Examiner be required to issue an Office action which is based on the totality of the record, i.e., which duly addresses the presentations and arguments made by applicants in their paper of July 10, 2009, including such information as may be useful to applicants to judge the propriety of continuing the prosecution of the application." Specifically, applicants argue "the Office action of November 23, 2009, does not acknowledge, or comment on, the substitute specification and applicants' detailed comments regarding the specification objections which were submitted with applicants' reply of July 10, 2009; the Office action of November 23, 2009, does not acknowledge, or comment on, applicants' detailed comments regarding the written description and the enablement requirement of 35 U.S.C. §112, paragraph 1, which were submitted with applicants' reply of July 10, 2009; and the Office action of November 23, 2009, does not acknowledge, or comment on, applicants' supplemental comments regarding the rejection under 35 U.S.C. §103(a), which were submitted with applicants' reply of July 10, 2009."

Applicants' arguments are found persuasive that the Office action of November 23, 2009 is not based on the totality of the record because the examiner failed to sufficiently address all arguments presented by applicants. Accordingly, the final Office action of November 23, 2009 is considered improper and will be withdrawn.

DECISION

The petition is subsequently **GRANTED**.

The final Office action of November 23, 2009 is hereby vacated. The application is being returned to the examiner to issue a new and complete final Office action with a reset period for reply which completely addresses the arguments set forth by applicants in the response of July 10, 2009.

Should there be any questions about this decision please contact Quality Assurance Specialist Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



Remy Yucel
Director, Technology Center 1600